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20 **FEDERAL INSURANCE COMPANY**

21 **UNITED STATES DISTRICT COURT**

22 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

23 **CROWLEY MARITIME**
24 **CORPORATION,**

25 Plaintiff,

26 vs.

27 **FEDERAL INSURANCE**
28 **COMPANY,; TWIN CITY FIRE**
INSURANCE COMPANY; RLI
INSURANCE COMPANY; and
DOES 1-20, inclusive,

Defendants.

No. CV 08 0830 SI

ANSWER OF FEDERAL
INSURANCE COMPANY

Complaint Filed: 01/07/08
Trial Date: None Set

ANSWER OF FEDERAL INSURANCE COMPANY

Defendant Federal Insurance Company ("Federal"), for its Answer to the
Complaint of Plaintiff Crowley Maritime Corporation ("CMC"), states as follows:

1 1. Federal denies the allegations in Paragraph 1 for lack of knowledge or
2 information sufficient to form a belief as to the truth of those allegations.

3 2. Federal admits the allegations in Paragraph 2 with respect to Federal,
4 and admits on information and belief the allegations in Paragraph 2 with respect to
5 Twin City Fire Insurance Company ("Twin City") and RLI Insurance Company
6 ("RLI").

7 3. Federal denies the allegations in Paragraph 3 for lack of knowledge or
8 information sufficient to form a belief as to the truth of those allegations.

9 4. Federal denies the allegations in Paragraph 4.

10 5. Federal admits that it issued Executive Protection Portfolio Policy No.
11 8120-0792 (the "Federal Policy") to CMC for the November 1, 2004 to November 1,
12 2005 Policy Period; that the Federal Policy includes an Executive Liability and Entity
13 Securities Liability Coverage Section (the "EL Section"); and that the EL Section is
14 subject to a \$10 million per Claim and aggregate Limit of Liability and a \$500,000
15 retention with respect to Insuring Clauses 2 and 3. Federal denies any other
16 allegations as to the content of the Federal Policy and states that the Federal Policy
17 speaks for itself. Federal denies that Exhibit A to CMC's Complaint is a true and
18 correct copy of the Federal Policy. Federal denies the allegation in the first half of
19 the last sentence of Paragraph 5 as to where the Federal Policy was issued. The
20 second half of the last sentence of Paragraph 5 sets forth conclusions of law to which
21 no response is required.

22 6. Insofar as the allegations of Paragraph 6 are not directed to Federal, no
23 response is required. To the extent any response is required, Federal denies the
24 allegations in Paragraph 6 for lack of knowledge or information sufficient to form a
25 belief as to the truth of those allegations.

26 7. Insofar as the allegations of Paragraph 7 are not directed to Federal, no
27 response is required. To the extent any response is required, Federal denies the
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1 allegations in Paragraph 7 for lack of knowledge or information sufficient to form a
2 belief as to the truth of those allegations.

3 8. Federal admits that a putative derivative and class action captioned
4 Franklin Balance Sheet Investment Fund, et al. v. Crowley, et al., C.A. No. 888-VCP
5 (the "Franklin Fund Action") was filed against CMC and certain individuals alleged
6 to be directors of CMC on November 30, 2004 in the Delaware Court of Chancery.
7 Federal denies the characterization of the Franklin Fund Action in Paragraph 8 and
8 states that the pleadings in that action speak for themselves. Federal denies the
9 allegations in the last two sentences of Paragraph 8.

10 9. Paragraph 9 should be stricken because it is not limited to a single set of
11 circumstances and therefore violates Rule 10(b) of the Federal Rules of Civil
12 Procedure. To the extent any response is required, Federal denies the allegations in
13 Paragraph 9, except that Federal admits: (a) as to the first and second sentences, that
14 CMC's counsel sent Federal a letter dated March 28, 2007, which speaks for itself;
15 (b) as to the third and fourth sentences, that CMC's counsel and Federal's claims
16 examiner Henry Nicholls spoke by telephone on April 5, 2007; and (c) as to the
17 seventh and eighth sentences, that the Delaware Chancery Court approved the
18 settlement in a decision that speaks for itself. Federal states that, contrary to the
19 allegations in Paragraph 9, CMC negotiated, drafted and executed the referenced
20 settlement without prior notice to or consent by Federal. By negotiating and entering
21 into the Agreement without Federal's knowledge or consent, CMC violated its
22 obligation under the Federal Policy "not to settle or offer to settle any Claim . . . or
23 otherwise assume any contractual obligation . . . without [Federal's] prior written
24 consent."

25 10. Paragraph 10 should be stricken because it is not limited to a single set
26 of circumstances and therefore violates Rule 10(b) of the Federal Rules of Civil
27 Procedure. To the extent any response is required, Federal denies the allegations in
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Paragraph 10, except that: (a) as to the fifth sentence, Federal admits that the Delaware Chancery court awarded the plaintiffs a total of \$4,219,458.26 in attorneys' fees and expenses, but Federal lacks knowledge or information sufficient to form a belief as to whether CMC paid that amount; and (b) as to the sixth sentence, Federal denies the allegations on the ground that the Chancery Court's decision speaks for itself.

11. Paragraph 11 sets forth conclusions of law to which no response is required. To the extent a response is required, Federal denies the allegations in Paragraph 11.

12. Federal denies the allegations of Paragraph 12 and further states that the referenced June 14, 2007 letter speaks for itself.

13. Federal denies the allegations in Paragraph 13.

14. Federal denies the allegations in Paragraph 14.

15. Paragraph 15 sets forth conclusions of law to which no response is required. To the extent a response is required, Federal denies the allegations in Paragraph 15.

16. Federal denies the allegations in Paragraph 16.

17. Federal denies the allegations in Paragraph 17.

18. Federal incorporates by reference herein its responses to the allegations in paragraphs 1-17.

19. Federal admits that Federal issued the Federal Policy for the November 1, 2004 to November 1, 2005 Policy Period and otherwise denies the allegations in Paragraph 19 as to the Federal Policy. Federal denies the remaining allegations in Paragraph 19 for lack of knowledge or information sufficient to form a belief as to the truth of those allegations.

20. Federal denies the allegations in Paragraph 20.

21. Federal denies the allegations in Paragraph 21.

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22. Federal denies the allegations in Paragraph 22.

23. Federal denies the allegations in Paragraph 23.

24. Federal denies the allegations in Paragraph 24. Federal states that CMC breached its obligations under the Federal Policy and failed to satisfy all applicable conditions precedent by actions or inactions including but not limited to: (a) negotiating and executing the Franklin Fund Action settlement agreement without consulting with Federal in advance and without Federal's prior written consent, in breach of Clauses 16(b) and (c) of the Federal Policy's EL Section; (b) failing to defend the Franklin Fund Action, in breach of Clause 16(a) of the Federal Policy's EL Section; (c) prejudicing Federal's position, in breach of Clause 16(d) of the Federal Policy's EL Section; and (d) filing suit against Federal without first complying with the terms of the Federal Policy, in breach of Clause 8 of the Federal Policy's General Terms and Conditions Section.

25. Federal denies the allegations in Paragraph 25.

26. Federal denies the allegations in Paragraph 26.

27. Federal denies the allegations in Paragraph 27.

28. Federal incorporates by reference herein its responses to the allegations in paragraphs 1-27.

29. Paragraph 29 sets forth conclusions of law to which no response is required. To the extent a response is required, Federal denies the allegations in Paragraph 29.

30. Federal denies the allegations in Paragraph 30, including subparagraphs (a) through (e).

31. Federal denies the allegations in Paragraph 31.

32. Federal denies the allegations in Paragraph 32.

33. Federal denies the allegations in Paragraph 33.

34. Federal denies the allegations in Paragraph 34.

35. Federal denies the allegations in Paragraph 35.

36. Federal denies that CMC is entitled to any of the relief requested in the Complaint.

37. Any and all allegations not expressly admitted, denied, qualified or otherwise responded to are hereby denied.

DEFENSES

First Defense

The Complaint fails to state a claim upon which relief may be granted.

Second Defense

The Complaint is barred because CMC settled, offered to settle, assumed a contractual obligation or admitted liability with respect to the Franklin Fund Action without Federal's prior written consent and without any prior notice to Federal, in violation of Clause 16(b) of the Federal Policy's EL Section

Third Defense

The Complaint is barred because CMC deprived Federal of the right to effectively associate with the Insureds, and CMC failed to consult in advance with Federal, regarding the defense and settlement of the Franklin Fund Action, including the negotiation of the settlement of that action, in violation of Clause 16(c) of the Federal Policy's EL Section.

Fourth Defense

The Complaint is barred because CMC failed to provide Federal with all information, assistance and cooperation which Federal reasonably required and because CMC prejudiced Federal's position, in violation of Clause 16(d) of the Federal Policy's EL Section.

Fifth Defense

The Complaint is barred insofar as CMC seeks to recover amounts that do not constitute Loss under the applicable law or the definition set forth in Clause 5 of the

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1 Federal Policy's EL Section, or that are uninsurable under the applicable law or as a
2 matter of public policy.

3 **Sixth Defense**

4 The Complaint is barred insofar as CMC seeks to recover amounts that neither
5 it nor any Insured Person was "legally obligated to pay on account of any Claim."

6 **Seventh Defense**

7 The Complaint is barred by California Insurance code Section 533, because
8 any loss for which CMC seeks coverage was caused by the willful act of the insured.

9 **Eighth Defense**

10 The Complaint is barred insofar as CMC breached its duty to defend the
11 Franklin Fund Action in violation of Clause 16(a) of the Federal Policy's EL Section.

12 **Ninth Defense**

13 The Complaint is barred because Exclusion 7(c) of the Federal Policy's EL
14 Section precludes coverage insofar as the Franklin Fund Action is based upon, arises
15 from, or is in consequence of one or more of the director defendants having gained in
16 fact any profit, remuneration or advantage to which such director defendants were not
17 legally entitled.

18 **Tenth Defense**

19 The Complaint is barred to the extent that the Franklin Fund Action is or is
20 deemed to be a Claim first made prior to the Federal Policy's Policy Period, pursuant
21 to Clauses 5 or 13(g) of the Federal Policy's EL Section.

22 **Eleventh Defense**

23 The Complaint is barred insofar as CMC failed to give notice in accordance
24 with Clause 15 of the Federal Policy's EL Section.

25 **Twelfth Defense**

26 The Complaint is barred to the extent that CMC is seeking coverage for
27 amounts for which CMC purported to grant indemnification to an Insured Person
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1 when CMC was neither permitted nor required by law to grant any such
2 indemnification.

3 **Thirteenth Defense**

4 The Complaint is barred to the extent that CMC is seeking coverage for any
5 amounts allocated to non-covered loss pursuant to Clause 17 of the Federal Policy's
6 EL Section.

7 **Fourteenth Defense**

8 The Complaint is barred insofar as CMC is seeking coverage for amounts that
9 do not exceed the applicable retention under the Federal Policy's EL Section.

10 **Fifteenth Defense**

11 The Complaint is barred by laches, waiver and estoppel, including judicial
12 estoppel.

13 **Sixteenth Defense**

14 The Complaint is barred by CMC's failure to satisfy one or more conditions
15 precedent to coverage or to filing suit against Federal.

16 **Seventeenth Defense**

17 The Complaint is barred in whole or in part by all terms, conditions,
18 definitions, exclusions, limits of liability and deductible amounts set forth in the
19 Federal Policy.

20 **Eighteenth Defense**

21 Any prayer for damages is barred by CMC's failure to take reasonable efforts
22 to mitigate any alleged damages.

23 **Nineteenth Defense**

24 Any prayer for equitable relief is barred in whole or in part by the doctrine of
25 unclean hands.

26 **Twentieth Defense**

27 The Complaint is barred because Federal acted reasonably and in a timely
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1 fashion in investigating and handling any and all requests for coverage under the
2 Federal Policy.

3 **Twenty-first Defense**

4 The Complaint is barred because Federal had and has reasonable grounds to
5 dispute coverage with respect to the matters for which CMC is seeking coverage.

6 **Twenty-second Defense**

7 The Complaint is barred because CMC acted in bad faith.

8 **Twenty-third Defense**

9 The Complaint is barred by Federal's right of set-off, recoupment and
10 reimbursement to the full extent of any and all amounts previously paid to CMC
11 under the Policy.

12 **Twenty-fourth Defense**

13 Any request for extra-contractual and/or exemplary damages is barred because
14 the application of such damages to Federal in this action would violate Article I, §§7,
15 15 and 17 of the California Constitution, Article IV, §16 of the California
16 Constitution and/or the Fifth, Eighth and Fourteenth Amendments of the United
17 States Constitution by, inter alia, depriving Federal of due process and equal
18 protection of the laws, not limiting the discretion of the trier of fact as to the amount
19 of exemplary damages, subjecting Federal to impermissibly vague, imprecise,
20 inconsistent standards and imposing cruel and unusual punishment or excessive fines
21 or other impermissible punishment.

22 **Twenty-fifth Defense**

23 Federal affirmatively asserts any other matter that constitutes avoidance or a
24 defense under applicable law. Federal reserves the right to interpose any and all
25 defenses available to it under federal and state law which may be applicable to this
26 action as they become available or apparent, or as they may be established during

27 ///

1 discovery and by the evidence in this case. Federal reserves the right to amend its
2 answer to assert such additional defenses.

3 WHEREFORE, having fully answered the Complaint, Federal respectfully
4 requests that the Complaint be dismissed, that the Court enter judgment in favor of
5 Federal and that the Court grant Federal such other and further relief as it may deem
6 just and proper.

7
8 Date: February 27, 2008

Respectfully submitted,

RUDLOFF WOOD & BARROWS LLP

9
10 By: 

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12 Kevin A. Norris

13 Of counsel:

David Newmann (admitted *pro hac vice*)

14 Joseph A. Bailey III (admitted *pro hac vice*)

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